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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 2523 of 2007
Date of decision: 29.10.2007

Dhanpat **...Petitioner**

Versus

Smt. Parbati and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sanjay Mittal, Advocate for the petitioner.

Mr. P.R.Yadav, Advocate for respondents No. 1 to 3.

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RAJESH BINDAL, J.

The challenge in the present petition is to the order dated March 16, 2007 passed by the learned Additional Civil Judge (Senior Division), Mahendergarh vide which the application of the petitioner/defendant for setting aside exparte order was dismissed primarily on the ground that petitioner being one of the legal heirs of defendant deceased Jadavo and written statement already having been filed by her during her life time and further the other legal representatives being on record, there was no justification for the petitioner to get the trial re-opened at this late stage in a suit, which is almost 10 years old. The Court also did not find any justification to permit the petitioner to lead any evidence, however, it was directed that he may join the proceedings at that stage and argue the case.

Learned counsel for the petitioner/defendant submitted that challenge made by the respondents/plaintiffs in the suit was to the consent decree dated June 2, 1990 suffered by them by raising the plea of fraud and misrepresentation. The suit was filed in the year 1997. In the written statement filed by Jai Narain, one of the defendants, the claim set up by the respondents/plaintiff was admitted though the other defendant in the suit, namely deceased Smt. Jadavo, of which the present petitioner is one of the legal representatives, filed written statement contesting the suit. However,

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later on brother of the petitioner, namely, Lal Singh colluded with the respondents/plaintiffs and appeared as a witness on behalf of the respondents/plaintiffs deposing in their favour. He submits that initially he had entrusted the responsibility to contest the case to his brother but later on it was found that he was colluding with the respondents/plaintiffs and accordingly, it became necessary for the present petitioner to intervene in the matter and contest the suit. Mere on account of delay, petitioner should not be deprived of his right to get the exparte order set aside and contest the suit on merits keeping in view the peculiar facts of the case.

On the other hand, learned counsel for respondents No.1 to 3 submitted that deceased Smt. Jadavo had already filed written statement in the case. The petitioner being one of the legal representatives could not take a stand different than what was taken by her in written statement already filed. The other legal representatives contested the suit in the manner deemed fit by them and in case the prayer made by the present petitioner to set aside the exparte order passed against him on June 8, 2004 is accepted, the same would unnecessarily delay the trial of the suit, which is already at its fag end.

After hearing learned counsel for the parties and perusing records, it is found that in the suit filed by the respondents/plaintiffs, the other parties, who are defendants in the suit are practically siding with the respondents/plaintiffs. One of the defendants has filed the written statement accepted the claim. There is nothing on record to suggest that deceased Smt. Jadavo had filed written statement accepting the claim of the respondents/plaintiffs meaning thereby she was contesting the suit. However, when one of the legal representatives had appeared as witness on behalf of respondents/plaintiffs supporting their case, in my opinion, the present petitioner, who is also one of the legal representatives has a right to contest the suit as otherwise his interest will be jeopardised with the stand taken by other legal representatives. In my opinion, keeping in view facts & circumstances of the case, he should be given an opportunity to contest the suit.

No doubt, the application is belated. Though there is no

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limitation for filing the application for setting aside exparte order but still keeping in view the peculiar facts and circumstances of the present case, the same would not be fatal for grant of relief to the petitioner as on that account the respondents/plaintiffs can be compensated with costs.

Accordingly, the present petition is allowed. The impugned order passed by the learned Court below is set aside. Resultantly, the prayer made by the petitioner in the application for setting aside exparte order dated June 8, 2004 is accepted subject to payment of Rs. 5,000/- as costs to the respondents. The parties shall appear before learned Court below for further proceedings on November 19, 2007.

The revision petition is disposed of in the manner indicated above.

October 29, 2007 **(Rajesh Bindal)**
Pka/DK **Judge**